IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc 94324 of 2007 and
Criminal Misc 26102-M of 2007

Date of decision: 20.12.2007

Harjit Singh …Petitioner

Versus

State of Punjab and anr …Respondents

Present: Mr Sanjeev Pandey, Advocate for the petitioner.
Mr IPS Sidhu, Sr DAG Punjab.
Mr Munish Bharadwaj, Advocate for respondent-2.

S.S. SARON, J (oral).

Criminal Misc 94324 of 2007

The charge sheet dated 19.9.2007 (Annexure P3) attached with this misc application is taken on record.

The application stands disposed of.

Criminal Misc 26102-M of 2007

This petition under Section 482 CrPC has been filed seeking quashing of FIR 39 dated 17.3.2006 registered unde at PS Focal Point, District Ludhiana for the offences under Sections 406/420 IPC and subsequent proceedings arising therefrom, on the basis of compromise dated 5.4.2007 (Annexure P2) entered into between the petitioner and respondent-2.

The impugned FIR (Annexure P1) was registered on the complaint of Surinder Mohan (respondent-2). It has been alleged that the petitioner had fraudulently withdrawn a sum of Rs 6,00,031/- from the

account of M/s Chamunda Impex by making a draft in favour of Oceanic Shipping and Cargo Movers, by using the cheque of the firm duly signed by the complainant. The petitioner and respondent-2 were partners in the firm – M/s Chamunda Impex. It had been alleged by the complainant that the cheque was left signed by him for use on behalf of the firm in the course of business in case the complainant was not there. Now both the partners have settled their disputes and a compromise dated 5.4.2007 (Annexure P2) has been recorded and it is prayed that the FIR be quashed.

Reply has been filed by Sh Harmohan Singh, DSP, Industrial Area, Ludhiana on behalf of the State. It is stated that the FIR has been registered on the basis of the petition filed by Surinder Mohan (respondent-2) in this Court which was disposed of vide order dated 13.1.2006 with a direction to SSP Ludhiana to examine the complaint and in case the complaint relates to the commission of a cognizable offence, the case be registered. In pursuance of the receipt of the aforesaid order, the SSP ordered an inquiry and the offence was found to have been made out and consequently the FIR was registered. Thereafter, challan in terms of Section 173 CrPC was prepared and submitted before the Court of competent jurisdiction on 4.1.2007. It is also submitted that the petitioner has an alternative remedy of approaching the trial Court itself.

Learned counsel for the petitioner and respondent-2 have submitted that charge in the case has been framed on 19.9.2007 which is with respect to the offence under Section 420 IPC only. The said offence, it is submitted is compoundable and, therefore, in view of the amicable settlement reached at between the parties, the impugned FIR and the consequential proceedings in pursuance thereof, may be quashed.

I have given my thoughtful consideration to the matter.

The dispute in the case is between two partners. The FIR was registered for the offences under Sections 406/420 IPC. The learned Additional CJM Ludhiana has chargesheeted the accused-petitioner for the offence under Section 420 IPC. The chargesheet dated 19.9.2007 (Annexure P3) records that the petitioner on or after 26.5.2004 cheated Surinder Mohan Verma (respondent-2) and dishonestly and fraudulently misused the cheque, presented it in the Bank and got prepared a draft for Rs 6,00,331/- in favour of the proprietorship concern of the petitioner i.e. M/s Ocean Shipping Agency and got encashed the same and thereby caused wrongful loss to the complainant – Surinder Mohan Verma and wrongful gain to the petitioner, thereby the petitioner had committed an offence punishable under Section 420 IPC. In terms of Section 320(2) CrPC, the offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table. Section 420 IPC is compoundable with the person cheated. The respondent-2, who is the person cheated, has stated that he has no objection to the quashing of the complaint.

The petition has been filed in this Court on 25.4.2007. The charge has been framed thereafter on 19.9.2007. After framing of charge, not a single witness has been recorded till date. The continuation of the further proceedings would be an exercise in futility. A larger Bench of this Court (5-Judges) in ***Kulwinder Singh and ors v. State of Punjab and anr*** 2007(3) RCR(Cr) 1052 has observed as follows:-

> " The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the CrPC is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "*finest hour of justice"*. Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the CrPC, in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation."

The present case, being that of a commercial transaction and having been compounded, it would be just and expedient to terminate the proceedings.

Accordingly, the criminal misc petition is allowed and FIR 39 dated 17.3.2006 (Annexure P1) registered at PS Focal Point, District Ludhiana for the offences under Sections 406/420 IPC and all subsequent and consequential proceedings in pursuance thereof including the charge sheet dated 19.9.2007 (Annexure P3) shall stand quashed.

20.12.2007. (S.S.SARON)
ASR JUDGE